

BRIG POLLY.

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LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS,  
TRANSMITTING A COPY OF THE CONCLUSIONS OF LAW AND FACT  
IN THE FRENCH SPOILIATION CASES RELATING TO THE BRIG  
POLLY AGAINST THE UNITED STATES.

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JANUARY 18, 1902.—Referred to the Committee on Claims and ordered to be printed.

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COURT OF CLAIMS,  
*Washington, D. C., January 17, 1902.*

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the conclusions of fact and of law filed under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings of the court relating to the vessel brig *Polly*, Henry Nicoll, master.

Respectfully,

JOHN RANDOLPH,  
*Assistant Clerk Court of Claims.*

Hon. DAVID B. HENDERSON,  
*Speaker of the House of Representatives.*

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[Court of Claims. French Spoiliations. (Act of January 20, 1885, 23 Stat., L. 283.) Vessel brig *Polly*, Henry Nicoll, master.]

No. of case.	Claimant.
1298.	The President and Directors of the Insurance Company of North America, <i>v.</i> United States.
1966.	Eliza J. Hieskell, administratrix of William Wilson, deceased, <i>v.</i> The United States.
2550.	Charles Selden, administrator, d. b. n. of Isaac McPherson, deceased, <i>v.</i> The United States.

PRELIMINARY STATEMENT.

These cases were tried before the Court of Claims on the 16th day of May, 1901.

The claimants were represented by J. Bayard Henry and John St. C. Brookes, esqs., and the United States, defendants, by the Attorney-General, through his assistant in the Department of Justice, Charles W. Russell, esq., with whom was Assistant Attorney-General Louis A. Pradt.

CONCLUSIONS OF FACT:

The court, upon the evidence and after hearing the arguments and considering the same with the briefs of counsel on each side, determine the facts to be as follows:

*General findings relating to the vessel and cargo.*

I. The brig *Polly*, Henry Nicoll, master, sailed on or about July 23, 1797, from Charleston, S. C., on a commercial voyage bound to Cape Nicholas Mole, laden with

a cargo of wine and flour, owned as hereinafter set forth. While peacefully pursuing her voyage the *Polly* was seized on the high seas on or about the 23d day of August, 1797, by the French privateer *Las Casas*, Capt. Jean Lapierre, and carried into the road of Jean Rabel, and was, with her cargo, on the 8th day of September, 1797, condemned as good prize by the commission delegated by the French Government to the Leeward Islands, sitting at Cape Francois, whereby the said vessel and cargo became a total loss to the owners.

The ground of condemnation is set forth in the decree as follows:

"Considering that the papers found on board the said brig and the interrogatories undergone by the captain and crew of the said vessel offer unquestionable proof that the said brig was bound for the Mole St. Louis (St. Nicholas?):

"Considering that the Mole is a port in rebellion against the laws of the Republic, under the protection of the British Government, and declared in a state of permanent siege by the resolution of the commission of the sixth Nivose last."

II. The *Polly* was a duly registered vessel of the United States of 66 $\frac{3}{4}$  tons burden, and was owned solely, one-half each, by William Wilson and Isaac McPherson, citizens of the United States and residents of Alexandria, Va.

III. The cargo of the *Polly* consisted of wine and flour, and was owned solely, one-half each, by said William Wilson and Isaac McPherson, owners of the vessel.

IV. The losses by reason of the capture and condemnation of the *Polly* were as follows:

Value of the vessel .....	\$1,980.00
Value of freight earned .....	1,100.00
Value of the cargo .....	6,474.50
Premium of insurance paid .....	562.50
Total loss .....	10,117.00

*Special findings relating to the several cases.*

V. In case No. 1298: The president and directors of the Insurance Company of North America was a corporation duly incorporated under the laws of the State of Pennsylvania.

On the 22d day of September, 1797, the said company insured the sum of \$2,000 for Isaac McPherson on one-half of the freight of the brig *Polly*, upon which it subsequently paid to him the sum of \$1,960. On the same day it also insured the sum of \$2,500 on the cargo for the same party, upon which it subsequently paid to him the sum of \$2,450.

The losses of the president and directors of the Insurance Company of North America by reason of the capture of the *Polly*, for which it was entitled to indemnity, were as follows:

Insurance on freight .....	\$1,960.00
Insurance on cargo .....	2,450.00
Amounting in all to .....	4,410.00

VI. In case No. 1966: William Wilson was owner of one-half the vessel and one-half the cargo. His losses, by reason of the capture of the *Polly*, for which he was entitled to indemnity, were as follows:

One-half the value of the vessel .....	\$990.00
One-half the value of the freight earned .....	550.00
One-half the value of the cargo .....	3,237.25
Amounting in all to .....	4,777.25

No insurance appears to have been effected by the said William Wilson on his interest in either the vessel, cargo, or freight.

VII. The said William Wilson was adjudicated an insolvent under the act of Congress for the relief of insolvent debtors within the District of Columbia, and made an assignment in insolvency under the said act on the 1st of June, 1818, of all his property of every description in trust for the use of his creditors.

VIII. In case No. 2550: Isaac McPherson was the owner of one-half the vessel and of one-half the cargo.

The losses of Isaac McPherson by reason of the capture of the *Polly*, for which he was entitled to indemnity, were as follows:

One-half the value of the vessel .....	\$990. 00
One-half the value of the freight earned .....	550. 00
One-half the value of the cargo .....	3, 237. 25
Premium paid for \$2,000 insurance on freight at 12½ per cent. ....	250. 00
Premium paid for \$2,500 insurance on cargo at same rate. ....	312. 50
Amounting in all to .....	5, 339. 75
Less insurance received on freight and cargo .....	4, 410. 00
Leaving net amount of losses .....	929. 75

IX. In case No. 1298: The president and directors of the Insurance Company of North America is a corporation, duly incorporated under the laws of the State of Pennsylvania before, and doing business at the time of the capture herein mentioned.

In cases Nos. 1966 and 2550 the claimants, Eliza J. Heiskell and Charles Selden, have produced letters of administration, respectively, for the estates of William Wilson and Isaac McPherson, deceased, on which they have severally been appointed and qualified, and have otherwise proved to the satisfaction of the court that the several parties on whose estates they are administrators, respectively, were the same persons who suffered the aforesaid losses, respectively, and were the original sufferers, and that they respectively represent the next of kin of the said persons.

X. Said claims were not embraced in the convention between the United States and the Republic of France, concluded on the 30th of April, 1803, and were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain, concluded on the 22d of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France of the 4th of July, 1831.

The claimants, Eliza J. Hieskell and Charles Selden, in their representative capacity, and the president and directors of the Insurance Company of North America, in its own right, are the owners of the said claims herein respectively made by them, which have never been assigned except as aforesaid, nor does it appear that any of said claims are owned by an insurance company, except as hereinbefore stated.

#### CONCLUSIONS OF LAW.

The court decides as conclusions of law that said seizure and condemnation were illegal, and the owners and insurer had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States; and that the claimants are entitled to the following sums from the United States:

Eliza J. Hieskell, administratrix of William Wilson, deceased (four thousand seven hundred and seventy-seven dollars and twenty-five cents) ..	\$4, 777. 25
Charles Selden, administrator, d. b. n., of Isaac McPherson, deceased (nine hundred and twenty-nine dollars and seventy-five cents) .....	929. 75
The president and directors of the Insurance Company of North America (four thousand four hundred and ten dollars) .....	4, 410. 00

Total amount recoverable (ten thousand one hundred and seventeen dollars) .....

10, 117. 00

BY THE COURT.

Filed June 3, 1901.

A true copy.

Test this 17th day of January, A. D. 1902.

[SEAL.]

JOHN RANDOLPH,  
Assistant Clerk Court of Claims.

